Supreme Court, U.S.
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No. 90-741

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

ALETHA DEWSNUP,
Petitioner,
v.

LOUIS L. TIMM, JOHN NEIUWLAND and FLOYD M. CHILDS, Trustees of the UNITED PRECISION MACHINE AND ENGINEERING COMPANY PROFIT-SHARING TRUST, ABCO INSURANCE AGENCY, INC., and JOSEPH L. HENROID, as Trustee for the Annette Jacob Trust,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR THE PETITIONER

TIMOTHY B. DYK
(Counsel of Record)
PATRICIA A. DUNN
PATRICK J. POTTER
DEENA B. JENAB
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939
Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether Section 506(d) of the Bankruptcy Code enables a Chapter 7 debtor to void a lien on real property abandoned by the bankruptcy trustee to the extent that the lien exceeds the property's value.

PARTIES TO THE PROCEEDING

The parties to the proceedings in the court below were: LaMar and Aletha Dewsnup and Louis L. Timm, John Neiuwland and Floyd M. Childs, Trustees of the United Precision Machine and Engineering Company Profit-Sharing Trust; ABCO Insurance Agency, Inc.; and Joseph L. Henroid, as Trustee for the Annette Jacob Trust.

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (Pet. App. 1a-11a) is reported at 908 F.2d 588. The order of the United States District Court for the District of Utah (Pet. App. 12a-13a), affirming the judgment of the bankruptcy court, is unreported. The memorandum opinion of the United States Bankruptcy Court for the District of Utah (Pet. App. 16a-32a) is reported at 87 Bankr. 676; its order of dismissal (Pet. App. 14a-15a) is unreported.

JURISDICTION

The court of appeals entered its judgment on July 11, 1990. On September 20, 1990, this Court granted Petitioner's request for an extension of time to file her Petition for a Writ of Certiorari until November 8, 1990. The Petition was timely filed on November 8, 1990. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) (1988).

STATUTORY PROVISIONS INVOLVED

Section 506 of the Bankruptcy Code, 11 U.S.C. § 506 (1988), provides:

> (a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.
>
> (b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.
>
> (c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—
>
> (i) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
>
> (ii) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

Section 541 of the Bankruptcy Code, 11 U.S.C. § 541 (1988), provides in pertinent part:

> (a) The commencement of a case under section 301, 302 or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case. . . .

Section 554 of the Bankruptcy Code, 11 U.S.C. § 554 (1988), provides in pertinent part:

> (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

Section 722 of the Bankruptcy Code, 11 U.S.C. § 722 (1988), provides in pertinent part:

> An individual debtor may . . . redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under Section 522 of this title or has been abandoned under Section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

Section 1111 of the Bankruptcy Code, 11 U.S.C. § 1111 (1988), provides in pertinent part:

> (b)(1)(A) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless . . . .
>
> (2) If such an election is made, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent that such claim is allowed.

Section 1322 of the Bankruptcy Code, 11 U.S.C. § 1322 (1988), provides in pertinent part:

> (b) Subject to subsections (a) and (c) of this section, the plan may— . . . .
>
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; . . . .

STATEMENT

This case presents the question whether, under Section 506(d) of the Bankruptcy Code, a Chapter 7 debtor can void a lien on abandoned real property to the extent that the lien exceeds the property's value.

In July 1984, Petitioner Aletha Dewsnup and her now-deceased husband, LaMar Dewsnup, sought the protections of Chapter 7 of the Bankruptcy Code in order to discharge their debts and secure a fresh start. Joint Appendix ("J.A.") at 2. Prior to 1978, the Dewsnups had owned outright two parcels of unencumbered farmland in Deseret and Oak City, Utah. *See* J.A. 5. On June 1, 1978, the Dewsnups borrowed $119,000 from the respondents to enable them to purchase another tract of land—the so-called "Arrow Property"—near the Deseret

and Oak City properties. *Id.* at 14, 27-36. To secure this loan, the Dewsnups gave the respondents a first mortgage on both the Deseret and Oak City properties (*id.*) and effectively a second mortgage on the Arrow Property (*id.* at 15, 37-38).[1]

In 1980, after selling certain assets, the Dewsnups paid over $150,000 to the respondents, representing the principal and interest on the $119,000 loan. J.A. 13, 15. The respondents, however, refused to discharge the loan (*id.* at 13), claiming that the Dewsnups had fallen behind on their mortgage payments and property taxes on the Arrow Property and that respondents had paid $49,966.21 to bring current the Dewsnups' first mortgage and taxes on the Arrow Property, thereby protecting their second mortgage. *Id.* at 15. The respondents then sought to foreclose on the Deseret and Oak City properties. *Id.* In April 1981, the respondents obtained a $49,966.21 judgment lien against the Dewsnups representing the amount that they had paid purportedly to protect their second mortgage. *Id.*

In June 1984, after two unsuccessful attempts at reorganization under Chapter 11 of the Bankruptcy Code, the Dewsnups commenced proceedings to liquidate their assets under Chapter 7. J.A. 2, 15-16. Under the Bankruptcy Code's automatic stay provision, the Dewsnups' filing stayed the respondents' attempted foreclosure sale of the Deseret and Oak City properties. *See* 11 U.S.C. § 362 (1988).

In early 1987, the Dewsnups filed an adversary proceeding to void a portion of the respondents' lien under Section 506 of the Bankruptcy Code. J.A. 3-9. They

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[1] The mechanism of this arrangement was somewhat unusual. Since the Dewsnups did not own the Arrow property, which was apparently already encumbered by a first mortgage, the Dewsnups assigned their purchase contract on the Arrow property as additional security for the loan. *See* J.A. 37-38.

did so because the claimed amount of the respondents' lien—an amount asserted to be roughly $120,000 because of the addition of interest and attorneys' fees (*see* Opp. Cert. at 3)—exceeded the fair market value of the Oak City and Deseret properties. *Id.* at 5.

The Dewsnups thus requested the bankruptcy court (1) to determine the extent of the respondents' secured claim on the property under Section 506(a) of the Code, which provides that an allowed claim of a creditor "is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim" (11 U.S.C. § 506(a)); (2) to void the lien to the extent that the respondents' claim exceeded the value of the property under Section 506(d), which provides that, "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void" (11 U.S.C. § 506(d)); and (3) to allow them to redeem the property by paying the respondents its fair market value. J.A. at 4-6.

At the June 15, 1987 trial, the bankruptcy court valued the property at $39,000—substantially less than the claimed value of the respondents' lien—but declined to allow the Dewsnups to void the lien to the extent that it exceeded the property's value. Pet. App. 2a, 16a. The bankruptcy court first assumed that the trustee had abandoned, or would abandon, the Dewsnups' property under Section 554 of the Bankruptcy Code. *Id.* at 17a n.1. It then held that Section 506(d) did not allow the Dewsnups to void the respondents' lien because that section applies only to "property in which the estate has an interest" (*id.* at 23a, citing 11 U.S.C. § 506(a)); in the court's view, property that the estate has abandoned under Section 554 of the Bankruptcy Code "is no longer property of the estate and the estate, consequently, has no interest in the property." *Id.* at 24a.

The bankruptcy court asserted that Congress designed Section 506 only to facilitate the distribution of the bankruptcy estate through the bifurcation of secured and unsecured claims on "property in which the estate has an interest." Pet. App. 28a, citing 11 U.S.C. § 506(a). The court found it "inconceivable . . . that Congress could have intended to create an avoiding power in a Chapter 7 debtor, respecting property which is not to be administered through the bankruptcy process, and which is based on a dichotomy created to facilitate the administration and distribution of the bankruptcy estate." *Id.* at 29a. The court then concluded that, as a policy matter, Chapter 7 debtors should not be able to retain their title to property at the expense of the creditors' rights to protect themselves at a forced sale. *Id.* at 30a. This conclusion, according to the court, would not "impede the debtors' fresh start" because they could simply "give up their interest in the property and obtain their fresh start." *Id.*

On July 11, 1988, in light of the court's conclusion that the lien exceeded the property's value, the Chapter 7 trustee abandoned the Deseret and Oak City properties pursuant to Section 554 of the Bankruptcy Code. J.A. 24. The trustee concluded that this property was burdensome to the bankruptcy estate in that the value of the property was less than the respondents' lien and unsecured creditors would, accordingly, realize nothing in a sale of the property. J.A. 24; *see* Pet. App. 3a n.2, 5a. The effect of the abandonment was to revest title to the Deseret and Oak City properties in the Dewsnups.

The district court summarily affirmed the bankruptcy court's decision (Pet. App. 12a-13a) and, on appeal, the Tenth Circuit affirmed in turn (*id.* at 1a-11a). The Tenth Circuit began by noting that:

> Courts denying relief [to Chapter 7 debtors] under [Section 506(d)] have stated various reasons for doing so, including: 1) that abandoned property

> is not administered by the estate and therefore sections 506(a) and (d) have no application; 2) that allowing this relief inequitably gives debtors more in a Chapter 7 liquidation than they would receive in the reorganization chapters; and finally, 3) that allowing avoidance pursuant to section 506(d) renders the redemption provision found in Code section 722 meaningless.

Pet. App. 4a.

In various parts of its opinion, the court of appeals then appeared to accept each of these theories:

First, the court of appeals concluded that Section 506(d) was unavailable to Chapter 7 debtors because it would allow debtors to receive "more in liquidation than they would receive in a reorganization." Pet. App. 9a. According to the court, its interpretation of Section 506 was "bolstered . . . through review of the creditors rights provisions found in Chapters 12 and 13." *Id.* at 8a. The court noted that these chapters provide creditors with protections against modification or impairment of certain secured claims on real property (*id.* at 8a-9a, citing 11 U.S.C. § 1322(B)(2) and 11 U.S.C. § 1111(b)(2)); it thus concluded that permitting debtors to use Section 506(d) to retain abandoned property would undercut Congress's "strong preference for reorganization rather than liquidation." *Id.* at 9a.

Second, the court of appeals concluded that Section 506(d) did not apply to real property. It found that Section 722, the Code's redemption provision, was "instructive." Pet. App. 9a. Because Section 722 allows redemption of personal property but not real property, the court found it "'obvious that Congress did not intend to permit a debtor to redeem his real property through the use of § 506(d).'" *Id.* at 9a-10a (citation omitted).

Finally, the court agreed with the bankruptcy court that Section 506(a) does not apply to abandoned property

(Pet. App. 5a-7a), explaining that Section 506(a) applies only to "property in which the estate has an interest" (*id.* at 6a); that "[t]he estate has no interest in, and does not administer, abandoned property" (*id.*); and that the Dewsnups thus could not use Section 506 to void the respondents' lien on their property because "the estate no longer ha[d] an interest" in the property following its abandonment "even though it did at one time." *Id.* at 7a-8a.[2] The court thus held that "[t]he plain language of the statute, coupled with the abandonment provision of the code, indicate[s that] Congress did not intend to allow Chapter 7 debtors to use Section 506(d) to retain abandoned property." *Id.* at 8a.

SUMMARY OF ARGUMENT

The court of appeals misinterpreted the Bankruptcy Code when it held that Chapter 7 debtors cannot void liens on abandoned real property under Section 506(d). This Court has already construed Section 506 of the Bankruptcy Code in accordance with its plain terms; in *United States v. Ron Pair Enterprises*, 489 U.S. 235, 238-39 (1989), it explained that Section 506 "governs the definition and treatment of secured claims, *i.e.*, claims by creditors against the estate that are secured by a lien on property in which the estate has an interest," and that "a claim is secured only to the extent of the value of the property on which the lien is fixed." Section 506(d)'s words are equally clear: "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void. . . ." 11 U.S.C. § 506(d). These plain words mean that a debtor can void a lien on real property to the extent that it exceeds the property's value.

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[2] The court of appeals nonetheless appeared to recognize that the estate retains an "interest" in abandoned property under Chapters 11, 12, and 13 of the Code. Pet. App. 8a.

None of the court of appeals' arguments for evading Section 506(d)'s plain words and effect in Chapter 7 proceedings has merit. First, the court's suggestion, based on policy arguments, that Section 506(d) does not apply in Chapter 7 liquidations, but rather only in the reorganization chapters of the Code, is contrary to the Code's words and structure. Nothing in Section 506(d) makes its lien avoidance rule inapplicable to Chapter 7 proceedings. Indeed, Section 103(a) of the Code makes abundantly clear that the provisions of Chapter 5—of which Section 506(d) is a part—apply fully to Chapter 7 cases.

The court of appeals' conclusion that this statutorily-compelled result is somehow inappropriate rests on its view that the creditors' rights provisions in Chapters 11 and 13 provide protections against the modification of certain liens and that, as a matter of policy, making lien avoidance under Section 506(d) available to Chapter 7 debtors would encourage liquidations rather than reorganizations. The court's argument that lien avoidance is inconsistent with Section 1322(b)(2) of the Code misperceives the role of Section 506 in that context; it is clear that Section 506(a) and (d) apply to liens protected from modification under Section 1322(b)(2) in the same manner that they apply to liens on property in Chapter 7 cases. The court's argument that lien avoidance is inconsistent with Section 1111(b) of the Code, which permits creditors to elect to treat their unsecured claims as though they were secured, fares no better; it ignores completely that this Section 1111(b) election is, by its terms, an express exception to Section 506.

Second, the court of appeals' argument, based on Section 722 of the Code, that Section 506(d) does not allow Chapter 7 debtors to void liens on real property likewise provides no basis for avoiding the clear words of Section 506(d). To be sure, Section 722 is the only "redemption" provision in Chapter 7 and applies only to personal property. But this does not mean that Section 506(d) cannot void liens on real property. Section 722 exists in the Code for a specific purpose unrelated to real property: to address Congress's perceived need to prevent abuses peculiar to consumer credit arrangements by enacting a redemption mechanism for personal property that gives debtors broader rights under the Code than were available under non-bankruptcy law. This specific provision does not demonstrate that Congress intended to deprive Chapter 7 debtors of the right to void liens on real property under Section 506(d) and to redeem that property, if possible, under state law.

Third, the court of appeals' argument that Section 506(d) does not apply to abandoned real property, and thus that Chapter 7 debtors cannot use Section 506(d) to void liens on abandoned real property, is unfounded. It ignores that Congress deliberately chose not to use the term "property of the estate" in Section 506 and opted instead for the phrase "property in which the estate has an interest"—a word choice that reinforces the conclusion that the latter phrase connotes something broader than "property of the estate." It ignores that Section 722, which applies to abandoned property, depends on Section 506's valuation and bifurcation provisions—making it unequivocally clear that Section 506(a)'s reference to "property in which the estate has an interest" must encompass abandoned property that is no longer "property of the estate." And it ignores that construing "property in which the estate has an interest" to exclude overencumbered and abandoned property would deprive Section 506(d) of one of its central functions: to void liens on property where the value of the lien exceeds the value of the collateral.

ARGUMENT

This case presents a straightforward question of statutory interpretation: whether the Bankruptcy Code allows Chapter 7 debtors to void liens on abandoned real property to the extent that a creditor's claim exceeds the value of the property. While Section 506(d) of the Code provides, in emphatic terms, an affirmative answer to this question, the court below reached the opposite conclusion.

Though its analysis is far from lucid, the court of appeals appeared to substantiate its erroneous conclusion with three, equally flawed, arguments. *First*, the court of appeals suggested, on the basis of policy arguments, that Section 506(d) does not apply at all in Chapter 7 liquidations. *Second*, based on the existence of Section 722 of the Code, which contemplates the use of Section 506 to void liens on certain personal property, the court of appeals asserted that Section 506(d) cannot apply to real property in Chapter 7 liquidations. And, *third*, supposedly based on the plain language of Section 506, the court found that Section 506(d) does not apply to real property that the trustee has abandoned in Chapter 7 liquidations.

This Court recently had occasion to address Section 506 of the Bankruptcy Code in *United States v. Ron Pair Enterprises*, 489 U.S. 235 (1989), where it held that the plain language of Section 506(b) entitles creditors to post-petition interest on nonconsensual, oversecured allowed claims in a Chapter 11 case. Here, as in *Ron Pair*, "[t]he task of resolving the dispute over the meaning of § 506[] begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enterprises*, 489 U.S. at 241. That inquiry, of course, requires examination not only of the particular words of Section 506, but of the broader design of the statute as well. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). This examination makes clear that the court of appeals erred in each of its three contradictory conclusions—and that the correct view is that articulated by the well-reasoned decision of the Third Circuit in *Gaglia v. First Federal Sav. & Loan Ass'n*, 889 F.2d 1304 (3d Cir. 1990), and the decisions of a majority of bankruptcy courts.[3] The court of appeals' holding amounts to nothing more than an effort to substitute the court's own views of appropriate bankruptcy policy for the specific provisions adopted by Congress in the 1978 Bankruptcy Code.

I. THE PLAIN LANGUAGE AND STRUCTURE OF THE BANKRUPTCY CODE MAKE CLEAR THAT SECTION 506(d) APPLIES IN CHAPTER 7 LIQUIDATIONS.

A. Section 506(d), By Its Terms, Allows Debtors To Void Liens In Chapter 7 Proceedings.

In *Ron Pair*, this Court explained that Section 506 of the Bankruptcy Code "governs the definition and treatment of secured claims." *United States v. Ron Pair Enterprises*, 489 U.S. at 238-39. The first subsection of Section 506 defines the provision's scope: it applies to any "allowed claim of a creditor secured by a lien on property in which the estate has an interest." 11 U.S.C.

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[3] *See In re Kostecky*, 111 Bankr. 823 (Bankr. D. Minn. 1990); *In re Donahue*, 110 Bankr. 41 (Bankr. D. Kan. 1990); *In re Moses*, 110 Bankr. 962 (Bankr. N.D. Okla. 1990); *In re Zobenica*, 109 Bankr. 814 (Bankr. W.D. Tenn. 1990); *In re Zlogar*, 101 Bankr. 1 (Bankr. N.D. Ill. 1989); *In re Hunter*, 101 Bankr. 294 (Bankr. S.D. Ala. 1989); *United States v. Garnett*, 99 Bankr. 757 (W.D. Ky. 1989), *aff'g*, 88 Bankr. 123 (Bankr. W.D. Ky. 1988); *In re Crouch*, 76 Bankr. 91 (Bankr. W.D. Va. 1987); *In re O'Leary*, 75 Bankr. 881 (Bankr. D. Ore. 1987); *In re Worrell*, 67 Bankr. 16 (C.D. Ill. 1986); *In re Cleveringa*, 52 Bankr. 56 (Bankr. N.D. Iowa 1985); *In re Lyons*, 46 Bankr. 604 (Bankr. N.D. Ill. 1985); *In re Gibbs*, 44 Bankr. 475 (Bankr. D. Minn. 1984); *In re Bracken*, 35 Bankr. 84 (Bankr. E.D. Pa. 1983); *Brace v. State Farm Mutual Automobile Ins. Co.*, 33 Bankr. 91 (Bankr. S.D. Ohio 1983); *In re Vigne*, 18 Bankr. 946 (Bankr. W.D. Pa. 1982); *In re Tanner*, 14 Bankr. 933 (Bankr. W.D. Pa. 1981); *In re Lindsey*, 64 Bankr. 19 (C.D. Ill. 1986).

§ 506(a).[4] Section 506(a) then provides for the definition and bifurcation of such claims. In plain terms, it provides that an allowed claim "is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." *Id.* This means, in this Court's words, that "a claim is secured only to the extent of the value of the property on which the lien is fixed; the remainder of that claim is considered unsecured." *United States v. Ron Pair Enterprises*, 489 U.S. at 239.

Section 506(d) follows naturally from this point of reference. Having provided for the bifurcation of claims into secured and unsecured components in Section 506(a), Congress described, in subsection (d), the effect of bifurcation on claims that are not "allowed secured claim[s]" because the property is overencumbered.[5] Section 506(d) provides that, "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void. . . ." 11 U.S.C. § 506(d). The statute broadly defines a "lien" as any "charge against or interest in property to secure payment of a debt or performance of an obligation" (11 U.S.C. § 101(37) (1988), *as amended by* Pub. L. No. 101-647 (November 25, 1990))—a definition that plainly encompasses mortgage liens on real property. *See* H.R. Rep. No. 595, 95th

[4] An allowed claim is defined in Section 502(a). That section provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects." 11 U.S.C. § 502(a) (1988).

[5] The two subsections that separate Section 506(a) and (d) deal with claims secured by property where the value of the property exceeds the value of the claims. *See* 11 U.S.C. § 506(b), (c). Section 506(b) was the section primarily at issue in *Ron Pair*, 489 U.S. 235.

Cong., 1st Sess., at 312 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6269; S. Rep. No. 989 95th Cong., 2d Sess., at 25 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News at 5811 ("liens" include security interests in property). The statute also broadly defines a "claim" as virtually any "right to payment. . . ." 11 U.S.C. § 101(5) (1988), *as amended by* Pub. L. No. 101-647 (November 25, 1990). Section 506(d)'s lien avoidance rule thus could hardly be clearer: a debtor can void a lien on real property to the extent that the claim is unsecured—that is, to the extent that the lien exceeds the value of the property itself.[6]

On the face of the statute, there is no indication that either Section 506 in general or Section 506(d) in particular is inapplicable to Chapter 7 proceedings. Under the Bankruptcy Code, debtors have the choice of filing under several different chapters: debtors can choose Chapter 7, which is broadly available to both individuals and entities, and liquidate their assets, distribute the proceeds to creditors, and obtain a discharge of pre-filing debts (*see* 11 U.S.C. §§ 704, 726, 727(a) (1988)); certain individuals with limited debt can choose reorganization under Chapter 13 and, in so doing, retain their assets, pay their debts out of future earnings pursuant to a reorganization plan and obtain a broad discharge (*see* 11 U.S.C. §§ 1322, 1327, 1328 (1988));[7] and debtors

[6] The exceptions to this voiding rule are limited, but explicitly stated in the Code. Under Section 506(d), as amended in 1984, a lien remains valid where (1) it secures a claim that is not allowed only because it involves a claim against a codebtor or unmatured alimony and child support (*see* 11 U.S.C. § 506(d)(1), citing 11 U.S.C. § 502(b)(5) and (e) (1988)), or (2) the claim is not an "allowed secured claim" only because an entity failed to file a proof of claim under Section 501 (*see* 11 U.S.C. § 506(d)(2)). Neither exception precludes the application of Section 506(d) in this case.

[7] *See generally* R. Jordan & W. Warren, *Bankruptcy* 671 (2d ed. 1989).

can opt to reorganize under Chapter 11, while retaining possession of their property and structuring a plan of reorganization (*see* 11 U.S.C. §§ 1107, 1129 (1988)).

It is abundantly clear that Section 506(d)'s lien avoidance rule applies with full force to Chapter 7 proceedings, just as it applies to proceedings under these other chapters of the Code. Indeed, Section 103(a) of the Code expressly states that "chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title." 11 U.S.C. § 103(a) (1988). Thus, the provisions of Chapter 5—including necessarily Section 506—apply to bankruptcy proceedings under Chapter 7.[8]

B. The Policies Underlying The Reorganization Provisions Of The Code Do Not Render Section 506(d) Inapplicable In Chapter 7 Liquidations.

To avoid the obvious conclusion that Section 506(d) applies in Chapter 7 liquidations—a conclusion that the plain language of the Code compels—the court of appeals resorted to supposed policies of the Bankruptcy Code that, in its view, made application of Section 506(d) in Chapter 7 bankruptcy cases inappropriate. The court first concluded that "the language used in sections 506(a) and (d) was intended to facilitate valuation and disposition of property in the reorganization chapters of the code." Pet. App. 8a. Then, to "bolster" its conclusion that Section 506 is available in reorganizations but not liquidations, the court asserted that certain creditors' rights provisions in Chapters 11 and 13, which protect against modification of certain liens, show that lien avoidance is unavailable under Chapter 7 because a debtor should not receive more favorable treatment in liquidation than in reorganization. *Id.* The court of appeals, however, was mistaken.

The court of appeals' attempt to limit Section 506's purpose to "valuation and disposition of property" in the reorganization chapters disregards the purpose that Section 506 serves in Chapter 7 liquidations. Section 506(d) is fully consistent with one of the central purposes of the Bankruptcy Code: to enable debtors "to get out from under the debilitating effects of too much debt . . . [and] obtain a fresh start." H.R. Rep. 595, at 125, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6086. As this Court said in *Grogan v. Garner*, 111 S. Ct. 654, 659 (1991), this fresh start policy allows debtors to "reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.'"

Though the court of appeals refused to accept Section 506(d)'s "fresh start" purpose, that purpose is obvious from the words of Section 506(d). *See Gaglia v. First Federal Sav. & Loan Ass'n*, 889 F.2d 1304, 1309 (3d Cir. 1989) (applying Section 506(d) to void liens on real property "will further the Code's policy of providing the debtor with a fresh start"); *Matter of Folendore*, 862

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[8] That Section 506 applies in Chapter 7 liquidations is, moreover, obvious from Section 722 of the Code. Section 722 allows Chapter 7 debtors to redeem certain personal property, if a lien on the property exceeds the value of the property, by paying the lienholder a lump-sum amount representing the property's fair market value. 11 U.S.C. § 722. Because Section 722's redemption provision explicitly requires the Chapter 7 debtor to pay the undersecured lienholder "the amount of [its] allowed secured claim" (11 U.S.C. § 722), Section 722 mandates resort to Section 506. *See* 4 L. King, *Collier on Bankruptcy*, ¶ 722.05[1] at 722-7 ("Redemption under Section 722 is accomplished by the debtor paying the lienholder the amount of the allowed claim secured by the lien. Under section 506(a), the amount of the allowed second claim of an undersecured creditor is the value of the secured party's collateral.") For Section 722 to have any meaning at all, therefore, Section 506 has to apply to Chapter 7 proceedings. *See In re Bell*, 700 F.2d 1053, 1055 n.3 (6th Cir. 1983) (using Section 506 to determine the amount that a debtor must pay to redeem property under Section 722), *citing In re Hart*, 8 Bankr. 1020, 1022 n.2 (Bankr. N.D.N.Y. 1981); *see also* 3 L. King, *Collier on Bankruptcy*, ¶ 506.04 at 506-16 (15th ed. 1990).

F.2d 1537, 1540 (11th Cir. 1989) ("The whole point of bankruptcy is to provide a debtor with a fresh start. Section 506 allows the debtor the option to begin anew on its former property.") Through its lien avoidance rule, Section 506(d) relieves debtors of burdensome liens on their property that exceed the fair market value of the property. And it precludes creditors from allowing their unsecured claims to pass through the bankruptcy case unaffected and, after the debtor's discharge, asserting those claims against any post-petition appreciation in the property. *Matter of Folendore*, 862 F.2d at 1540.[9]

Applying Section 506(d) in Chapter 7 liquidations, consistent with these purposes, does not undermine any policy of the reorganization chapters. Contrary to the court of appeals' conclusion (Pet. App. 8a-9a), permitting Chapter 7 debtors to void liens on overencumbered property is entirely consistent with Section 1322(b)(2) of the Code. Chapter 13 allows debtors to retain their assets, pay their debts out of future earnings pursuant to a reorganization plan and obtain a broad discharge. *See* 11 U.S.C. §§ 1322, 1327, 1328. Under Section 1322(b)(2), however, a Chapter 13 debtor's plan of reorganization cannot "modify the rights of holders of secured claims . . . secured only by a security interest in real

[9] Other provisions of the Code confirm that Congress intended Section 506(d) to operate in this manner and to serve this fresh start policy. In Section 522(c)(2), for example, Congress expressly recognized the availability and effect of lien avoidance in the context of exempt property. That section describes the types of liens on exempt property that are permitted to pass through bankruptcy unaffected; it excepts liens on exempt property that have been avoided under Section 506(d). 11 U.S.C. § 522(c)(2)(A)(ii) (1988); *In re Kostecky*, 111 Bankr. 823, 826 (Bankr. D. Minn. 1990) ("11 U.S.C. § 522(c)(2)(A)(ii) *explicitly envisions* the application of § 506(d) lien avoidance to exempt property"); *In re Haugland*, 83 Bankr. 648, 651 (Bankr. D. Minn. 1988). It thus makes clear that, through lien avoidance under Section 506(d), debtors can ensure that their exempt property will not be liable for pre-petition debt and thus obtain a fresh start.

property that is the debtor's principal residence. . . ." 11 U.S.C. § 1322(b)(2). Though the thrust of the court of appeals' Section 1322 argument is far from clear (Pet. App. 8a-9a), the court apparently believed (1) that Section 1322(b)(2)'s prohibition against modifying a creditor's claim secured solely by home mortgage prevents lien bifurcation and lien avoidance under Section 506 and (2) that, accordingly, lien "strip downs" should be unavailable in Chapter 7 proceedings because they would improperly encourage liquidation rather than reorganization.

This argument, however, starts with a faulty premise that even the court of appeals has since disclaimed. Contrary to the court's assumption in this case, the Tenth Circuit itself has specifically held that resorting to Section 506 for bifurcation of claims secured solely by home mortgages is entirely permissible under Section 1322(b)(2). *In re Hart*, 923 F.2d 1410 (10th Cir. 1991). Indeed, in *Hart*, the court correctly concluded (1) that Section 506(a)'s provision for bifurcation of claims into secured and unsecured components applies fully to Chapter 13 proceedings; (2) that the bifurcation of an undersecured mortgage into secured and unsecured claims under Section 506 does not constitute a prohibited "modification" of a secured claim under Section 1322(b)(2); and (3) that, as a result, only the secured portion of such a claim warrants protection under Section 1322(b)(2). *In re Hart*, 923 F.2d at 1415.

As the leading bankruptcy treatise notes, the effect of Section 506 in this context is that, despite Section 1322(b)(2), "an undersecured claim secured only by a security interest in the debtor's principal residence may still be divided into an allowed secured claim and an allowed unsecured claim, with the lien declared void to the extent it secures a claim in excess of the allowed secured claim." 5 L. King, *Collier on Bankruptcy*, ¶ 1322.06 at 1322-15 (15th ed. 1990). This conclusion

—which is fully consistent with the conclusions of every federal court of appeals to address the issue[10]—amply demonstrates that Section 506 operates in Chapter 13 in precisely the same manner that it operates in Chapter 7.[11]

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[10] *See Wilson v. Commonwealth Mortg. Corp.*, 895 F.2d 123 (3d Cir. 1990); *In re Hougland*, 886 F.2d 1182 (9th Cir. 1989). It is also consistent with the decisions of the majority of bankruptcy courts. *See In re McNair*, 115 Bankr. 520, 523 (Bankr. E.D. Va. 1990); *In re Demoff*, 109 Bankr. 902, 915 (Bankr. N.D. Ind. 1989); *In re Hill*, 96 Bankr. 809, 813-14 (Bankr. S.D. Ohio 1989); *In re Frost*, 96 Bankr. 804, 807 (Bankr. S.D. Ohio 1989).

[11] *See* Howard, *Stripping Down Liens: Section 506(d) and the Theory of Bankruptcy* (hereinafter "*Stripping Down Liens*") at 70-71 (Manuscript, to be published in 65 Am. Bankr. L.J. (1991)) (The manuscript has been lodged with the Court for the Court's convenience.) Even if Section 506 did not operate in Chapter 13 in this way, the court of appeals' conclusion that allowing Chapter 7 debtors to void liens under Section 506 would somehow improperly discourage Chapter 13 reorganization simply does not follow. The Bankruptcy Code contains provisions that make each chapter more or less appealing to a particular debtor. *See Gaglia v. First Federal Sav. & Loan Ass'n*, 889 F.2d at 1311; *In re Gibbs*, 44 Bankr. 475, 479 (Bankr. D. Minn. 1984) ("Obviously there are various provisions in all chapters of Title 11 which make them attractive for different reasons."). While Congress has expressed a preference for reorganization, the ultimate decision to choose reorganization over liquidation remains with the debtor (*see In re Silva*, 82 Bankr. 845, 846-47 (Bankr. S.D. Ohio 1987); *In re Ross*, 95 Bankr. 509, 510 (Bankr. S.D. Ohio 1988)). The debtor must consider the various incentives pointing to reorganization—including the prospect of retaining his property, the reduced stigma in reorganization, and the broader discharge. *See* Note, *The Debtor's Right To Restrict Lienholder Recovery to the Value of the Encumbered Property Under Section 506 of the Bankruptcy Code*, 11 J. Corp. L. 433, 447 (1986); *see also Stripping Down Liens*, at 75-79. The assumed availability of Section 506's strip-down provision in Chapter 7 but not in Chapter 13 might provide one incentive to the debtor to choose liquidation, but there is simply no basis for concluding that Congress intended to eliminate all attractive elements of Chapter 7 in order to force resort to the reorganization chapters.

The court of appeals' suggestion (Pet. App. 9a) that allowing Chapter 7 debtors to void liens under Section 506(d) is irreconcilable with reorganization under Chapter 11 is similarly flawed. It is true, of course, that Section 1111(b) prevents a Chapter 11 debtor from stripping down undersecured liens if a creditor has "elected" to have his claim treated as though it were fully secured. 11 U.S.C. § 1111(b). But the court of appeals' argument completely ignores that the Section 1111(b) election is, by its plain terms, an exception to Section 506. While "[t]he election in Section 1111(b) is an extraordinarily difficult provision in the Code" (Carlson, *Undersecured Claims Under Bankruptcy Code Sections 506(a) and 1111(b): Second Looks at Judicial Valuations of Collateral* (hereinafter "Carlson"), 6 Bankr. Dev. J. 253, 304 (1989)), Congress made at least one thing clear: that a creditor makes this Section 1111(b) election "*notwithstanding* section 506(a)." 11 U.S.C. § 1111(b)(2) (emphasis added). Congress's explicit provision for an exception to Section 506 in Chapter 11 strengthens, rather than undermines, the conclusion that Section 506 is fully available to Chapter 7 debtors seeking to strip down liens.

Congress apparently enacted the Section 1111(b) election to reverse the result in a pre-Code reorganization case, *In re Pine Gate Assoc.*, 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr. N.D. Ga. 1976), involving non-recourse loans.[12] In *Pine Gate*, a reorganizing debtor successfully

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[12] *See In re South Village Inc.*, 25 Bankr. 987, 999 (Bankr. D. Utah 1982); *Stripping Down Liens*, at 74 (Section 1111(b) was designed to address *In re Pine Gate Assoc.*, 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr. N.D. Ga. 1976)). A recourse lender is generally free to sue the borrower for any deficiency resulting from the collateral being worth less than the lender's total claim. A non-recourse lender can look only to the property securing its claim for payment. *See Vintero Corp. v. Corporacion Venezolana de Fomento*, 735 F.2d 740, 742 (2d Cir.), *cert. denied*, 469 U.S. 1087 (1984) ("By pre-

bifurcated claims held by certain non-recourse creditors into secured and unsecured portions and retained the property by tendering to the creditors the appraised value of the property. Because of the non-recourse nature of the claim, the creditors could not pursue a deficiency against the debtor personally and were therefore prevented from receiving anything on their unsecured claims.[13] By enacting Section 1111(b) in 1978, Congress reversed the *Pine Gate* result in Chapter 11 cases by converting non-recourse creditors' claims into recourse claims, thus making the unsecured claims of these creditors eligible for payment out of the estate. *See* 11 U.S.C. § 1111(b)(1)(A). At the same time, Congress gave them the option (the Section 1111(b) election) to surrender their newly-acquired recourse status in the hope of realizing a return on an increase in the collateral's value. *See* 124 Cong. Rec. 32406-07 (1978) (remarks of Rep. Edwards); 124 Cong. Rec. 34006-07 (1978) (remarks of Sen. DeConcini). However, by virtue of Section 1129(b)(2)(A), that hope will be realized only in limited circumstances[14]—where the property is sold after confirmation of the plan[15] or where the debtor defaults under the plan.[16] In all other circumstances, the creditor will receive only the value of the property as of the date of confirmation.[17]

cluding the [non-recourse] party from getting a deficiency judgment against him, the debtor contains the risk of loss to the security alone. . . .").

[13] *See Stripping Down Liens*, at 74; Carlson, at 281.

[14] It is not surprising, therefore, that the election is rarely made. *See In re Shrum*, 98 Bankr. 995, 1003 n.4 (Bankr. W.D.Okla. 1989) (concurring opinion) ("The benefits of the § 1111(b)(2) election are dubious, as its apparent advantages are substantially negated by § 1129(b)(2)(A). . . . The § 1111(b)(2) election is seldom made and it is even less frequently understood.").

[15] *See* Carlson, at 295 (If a sale unexpectedly occurs under the plan, "the electing creditor is entitled to the proceeds 'up to the full amount of the debt.'") (footnote omitted).

[16] *In re Wandler*, 77 Bankr. 728, 732 (Bankr. D.N.D. 1987) *citing In re Southern Mo. Towing Serv., Inc.*, 35 Bankr. 313, 314 (Bankr. W.D. Mo. 1983); *In re Mahaner*, 34 Bankr. 308, 309 (Bankr. W.D.N.Y. 1983).

[17] *See In re Wandler*, 77 Bankr. at 732 ("Upon making an 1111(b) election a creditor . . . has the right to receive the full amount of its allowed claim over time, as long as these payments have a present value as of the effective date of the plan, of at least the value of the creditor's interest in its collateral."); *see also In re Kvamme*, 93 Bankr. 698, 699-700 (Bankr. D.N.D. 1988); 124 Cong. Rec. 32,407 (1978) (statement of Rep. Edwards); 124 Cong. Rec. 34006-07 (1978) (statement of Sen. DeConcini); 5 L. King, *Collier on Bankruptcy*, ¶ 1111.02 at 1111-28 (15th ed. 1990) ("The cash payments [to the electing creditor] however, need only have a present value equal to the value of the debtor's interest in the collateral. . . ."); *Stripping Down Liens*, at 77.

Section 1111(b) demonstrates that Congress knew how to draft an explicit exception to Section 506 that allows certain creditors to prevent the strip down of their liens. Had Congress intended the same treatment for creditors in Chapter 7, it plainly could have enacted the necessary excepting language to achieve this result. As the Third Circuit noted in *Gaglia*, "Section 1111(b)(1) is carefully drawn and uses specific, precise language. It demonstrates that Congress knew how to exempt certain creditors from the operation of § 506, and could do so with precision." 889 F.2d at 1311.

II. THERE IS NO BASIS FOR CONCLUDING THAT SECTION 506(d) APPLIES ONLY TO PERSONAL, BUT NOT REAL, PROPERTY IN CHAPTER 7.

The court of appeals' next argument for avoiding the clear words of Section 506(d)—that Section 722 of the Code makes it "'obvious that Congress did not intend to permit a debtor to redeem his *real* property through the use of § 506(d)'" (Pet. App. 9a-10a (citation omitted; emphasis added))—is equally flawed. The court of appeals was entirely correct in stating that Section 722 is the only "redemption" provision in Chapter 7 and that Sec-

tion 722 applies only to personal property. Pet. App. 9a-10a. But these two statutory facts do not, as the court of appeals asserted, compel the conclusion that Section 506(d) is inapplicable to real property in Chapter 7 cases.

The court's erroneous conclusion flows from its confusion of the concepts of lien avoidance and redemption. Section 506(d) applies broadly to liens on "property" and thus voids liens on both real and personal property. 11 U.S.C. § 506(d).[18] It is not a redemption provision. *Matter of Folendore*, 862 F.2d 1537, 1540 (11th Cir. 1989) ("Section 506(d) does not really 'redeem' the property of the debtor."); *see also Gaglia v. First Federal Sav. & Loan Ass'n*, 889 F.2d at 1310. While Section 506 certainly clears the way for redemption under Section 722, the redemption provision in Section 722 exists for a specific purpose: to address Congress's perceived need to "prevent abuses" peculiar to consumer credit arrangements by enacting a redemption mechanism for personal property that "is broader than rights of redemption under the Uniform Commercial Code." *See* H.R. No. 595, at 380-81, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6336.[19] In short, because of the peculiar concerns of credit

[18] As we have explained (*supra*, at 14-15), Congress specifically intended the term "lien" to encompasses mortgage liens on real property. *See* H.R. Rep. No. 595, at 312, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6269; S. Rep. No. 989, at 25, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 5811 ("liens" include security interests in property). And the majority of bankruptcy courts has agreed. *See* note 3, *supra* (and cases cited therein); 3 L. King, *Collier on Bankruptcy*, ¶ 506.07, at 506-75 (15th ed. 1990).

[19] Congress was fully aware of the potential abuses in the consumer context. *See* H.R. Rep. 595, at 127, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6088. In consumer cases, very often a secured creditor with a security interest in all of the debtor's property, including household and personal goods, used the threat of foreclosure to obtain a reaffirmation of a debt. The secured creditor was able to threaten to deprive a debtor of even the most insignificant household effects, including furniture, cooking utensils, and clothing, even though the items had little if any realizable market value. However, the goods did have a high replacement cost, and thus the creditor was able to use the threat of repossession, rarely carried out, to extract more than he would be able to extract if he foreclosed or repossessed. Section 722's right of redemption "amounts to a right of first refusal in a foreclosure sale of the property involved. It allows the debtor to retain his necessary property and avoid high replacement costs. . . ." *Id.*

arrangements relating to personal property, Congress gave debtors broader rights under the Code than were available under non-bankruptcy law. *Id.*

In contrast to its action with respect to *personal* property, Congress thus did not address redemption of *real* property. The debtor who uses Section 506(d) to avoid a real property lien does not receive, by virtue of the Code, all right, title and interest to the property; instead, the debtor retains his title subject to the creditor's secured claim, which is equal to the value of the property. *See Gaglia v. First Federal Sav. & Loan Ass'n*, 889 F.2d at 1310; *Matter of Folendore*, 862 F.2d 1537. The debtor may, however, be able to redeem the real property by virtue of state law.[20] Section 722 thus does not demonstrate that Congress intended to deprive Chapter 7 debtors of the right to void liens on real property under Section 506(d) and to redeem that property, if possible, under state law.

III. NOTHING IN THE PLAIN LANGUAGE OR STRUCTURE OF THE BANKRUPTCY CODE PRECLUDES THE APPLICATION OF SECTION 506(d)'S STRIP-DOWN PROVISION TO ABANDONED PROPERTY.

Finally, the court of appeals resorted to a "plain language" argument that deprives Section 506(d) of the Bankruptcy Code of one of its central functions. Pet.

[20] Note, *An Individual Debtor's Right To Avoid Liens Under Section 506(d) of the Bankruptcy Code*, 12 Cardozo L. Rev. 263, 277 (1990) ("State law, not the Bankruptcy Code, entitles [the debtor] to buy back encumbered property from secured creditors.") (footnote omitted).

App. 8a. In the court's view, because abandoned property is no longer "property of the estate" under Section 554, the trustee's abandonment of the debtor's real property stripped the estate of any "interest" in that property and deprived the debtor of its right to void a lien on that property under Section 506(d). *Id.* at 5a-8a.

Initially, we note that Congress deliberately chose not to use the term "property of the estate"—a phrase that it had defined and used exhaustively elsewhere in the Code—in Section 506 and opted instead for the phrase "property in which the estate has an interest." Section 506, as currently codified, had its origins in H.R. 6, a bill that Representative Edwards introduced on January 4, 1977. That early version of Section 506 provided that "[a]n allowed claim of a creditor secured by a lien on *property of the estate* is a secured claim to the extent of the value of such creditor's interest in such property, and is an unsecured claim to the extent that such value is less than the amount of such allowed claim." H.R. 6 § 506(a), 95th Cong., 1st Sess. (1977) (emphasis supplied). The drafters clearly knew at the time what they intended "property of the estate" to mean, since they had defined the phrase elsewhere in H.R. 6. *See* H.R. 6 § 541. Nonetheless, on July 11, 1977, when Representative Edwards introduced a substitute bill, H.R. 8200—the bill that Congress eventually amended and enacted—the bill did not mention "property of the estate" in Section 506. Rather, the July 11, 1977 version of H.R. 8200 contained, in its Section 506, the same phrase that currently exists in the statute, i.e., "property in which the estate has an interest." H.R. 8200 § 506(a), 95th Cong., 1st Sess. (1977). Congress's explicit word choice in Section 506(a) demonstrates that "property in which the estate has an interest" connotes something different than "property of the estate."

Section 506's application to overencumbered and abandoned property under Section 722 of the Code, moreover,

demonstrates that Section 506(a)'s reference to "property in which the estate has an interest" includes abandoned property. Section 722 enables an individual Chapter 7 debtor to "redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property . . . has been *abandoned under Section 554* of this title, by paying the holder of such lien the amount of the *allowed secured claim* of such holder that is secured by such lien." 11 U.S.C. § 722 (emphasis supplied). Section 722, by its terms, applies to abandoned property; at the same time, it mandates resort to Section 506—the only mechanism in the Code for valuing and bifurcating claims—to determine the amount of the "allowed secured claim" and, accordingly, the price of redeeming abandoned personal property. *See* 4 L. King, *Collier on Bankruptcy* ¶ 722.05 at 722-7 (15th ed. 1989). Section 722's dependence on Section 506's valuation and bifurcation provisions makes unequivocally clear that Section 506(a)'s reference to "property in which the estate has an interest" must encompass abandoned property that is no longer "property of the estate." [21]

Finally, construing "property in which the estate has an interest" to exclude overencumbered and abandoned property would deprive Section 506(d) of one of its central functions and render the provision entirely meaningless in the situation to which it was most clearly directed. This is so because the very situation that Section 506(d) ad-

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[21] *See* Note, 12 Cardozo L. Rev., *supra* note 20, at 279 ("Because section 722 implicitly directs a bankruptcy court to use section 506(a) to value a claim on abandoned property, the minority's argument [that 506(a) cannot be used to value property that is not part of the estate] is invalid.").

dresses—i.e., where the value of the lien exceeds the value of the collateral—is the exact same situation that gives rise to abandonment. The trustee will typically abandon property when the value of the mortgagee's or judgment lienholder's claim exceeds the value of the property. *See In re Crouch*, 80 Bankr. 364 (Bankr. W.D. Va. 1987) (abandonment appropriate where no equity for unsecured creditors); *In re Manicure*, 29 Bankr. 248 (Bankr. W.D. Va. 1983) (abandonment where little or no equity); *In re A&T Trailer Park, Inc.*, 53 Bankr. 144 (Bankr. D. Wyo. 1985) (abandonment where first mortgage exceeded $480,000 and residence valued at $50,000); 4 L. King, *Collier on Bankruptcy*, ¶ 554.02[5] at 554-11.[22] To hold that abandonment prevents use of Section 506(d) would largely write that provision out of the Code.[23]

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[22] This is what happened in this case. The Dewsnups' property remained "property of the estate" throughout the proceedings in the bankruptcy court, including the trial under Section 506. After the bankruptcy court had valued the property to be less than the respondents' lien, the trustee abandoned the property. J.A. 23-24; Pet. App. 3a n. 2.

[23] If Section 506(d) were held inapplicable to abandoned property, the only possible circumstances in which it could apply would be to void liens where the underlying claim was disallowed under Section 502 and to void liens on exempt property under Section 522(c). Section 506(d), by its own terms, is not limited to the former; and we do not understand the court of appeals to suggest it to be limited to the latter. Obviously, if Section 506(d)'s purpose was to void liens on exempt property only, it would have been far more logical for Congress to include it as a part of Section 522(f), which deals explicitly with lien avoidance on exempt property.

This construction would, of course, have the effect of rendering Section 506(a) "entirely nugatory" (*In re Mays*, 85 Bankr. 955, 961 (Bankr. E.D. Pa.), *aff'd*, 1988 U.S. Dist. LEXIS 8427 (1988)) as well. If abandoned property is not "property in which the estate has an interest" then Section 506(a) also effectively cannot apply to property where the lien exceeds the value of the property.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

TIMOTHY B. DYK
(Counsel of Record)
PATRICIA A. DUNN
PATRICK J. POTTER
DEENA B. JENAB
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939
Counsel for Petitioner

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